

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Andrea Goldblum,	:	
Plaintiff,	:	Case No. 1:19-cv-398
v.	:	Judge Dlott
University of Cincinnati,	:	Magistrate Judge Bowman
Defendant.	:	

**DEFENDANT UNIVERSITY OF CINCINNATI'S RESPONSE
TO PLAINTIFF'S OBJECTIONS (DOC. # 18) TO THE
MAGISTRATE'S REPORT AND RECOMMENDATION (DOC. # 17)**

On May 27, 2019, Plaintiff filed her two-count Complaint alleging that she was retaliated against in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (“Title IX”) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). (Compl., Doc. 1 at PAGEID # 1). Defendant, the University of Cincinnati (the “University”), moved to dismiss Plaintiff’s Complaint in its entirety. (Mot. Dismiss, Doc. 7). Magistrate Judge Bowman issued a Report and Recommendation recommending that Plaintiff’s Title VII claim be dismissed because “the complaint is devoid of any allegations that Plaintiff engaged in any activity protected by Title VII[.]” (R&R, Doc. 17, PAGEID # 121 (emphasis in original)). Thereafter, Plaintiff filed objections to Magistrate Judge Bowman’s recommendation of dismissal of her Title VII claim. (Pl.’s Objections to R&R, Doc. 18).

Plaintiff’s objections to the Report and Recommendation are without merit. Plaintiff herself notes that she is objecting “solely for the purposes of retaining any applicable appellate rights and in the event that the relevant law in the Sixth Circuit regarding pre-emption changes

while this case is pending.” (Pl.’s Objections to R&R, Doc. 18, PAGEID # 126). However, a change of the relevant law in the Sixth Circuit regarding whether Title IX employment retaliation claims are preempted by Title VII would do nothing to save Plaintiff’s Title VII claim. Rather, Plaintiff’s Title VII claim fails for the simple reason that she has not alleged a *prima facie* case of Title VII retaliation. As noted by Magistrate Judge Bowman, Plaintiff has not “allege[d] that she opposed a discriminatory *employment* practice or participated in a charge or investigation of an *employment* practice under Title VII.” (R&R, Doc. 17, PAGEID # 122 (emphasis in original)). It is this defect that is fatal to her Title VII claim, not the current state of case law in the Sixth Circuit regarding preemption.

Therefore, Defendant University of Cincinnati respectfully requests that this Court overrule Plaintiff’s objections and adopt Magistrate Judge Bowman’s recommendation that Plaintiff’s Title VII claim be dismissed.

Respectfully submitted,

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/s/ Reid T. Caryer

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CERTIFICATE OF SERVICE

This will certify that the foregoing *Defendant University of Cincinnati's Response to Plaintiff's Objections (Doc. # 18) to the Magistrate's Report and Recommendation (Doc. # 17)* was filed electronically on November 4, 2019. Parties may access this filing through the Court's system.

/s/ Reid T. Caryer

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